UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,187	02/20/2004	Michael J. Fuller	BTEC-001/03US	6193

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EXAMINER
VU, THONG H

ART UNIT	PAPER NUMBER
2142	

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

		Application No.	Applicant(s)
	Office Action Summary	10/783,187	FULLER ET AL.
		Examiner	Art Unit	
		Thong H. Vu	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
   Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>20 February 2004</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>21-31</u> is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>21-31</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date <u>7/04</u>.
4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

1.   Claims 21-31 are pending.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2.   Claims 21-31 are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. (i.e.: the web server routing said streaming video or audio data <u>without a plug-in or a helper application to each individual browser client</u>).

Claim Rejections - 35 USC § 112

3.   Claims 21-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It was unclear that What conditions, Where, When and How the web server routing said streaming video (or audio) data <u>without a plug-in or a helper application to each individual browser client</u> that requests said streaming video or audio data. Examiner does not find a condition wherein A client browser such as Netscape or Windows95/98/2000 or AOL browser may be or may be not to need a plug-in to perform a particular video/audio data.

Double Patenting

4.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent

and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 21-31 are rejected on the ground of nonstatutory double patenting over claims 1-4 of U. S. Patent No. 6,711,622 ('622) since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

(622) 1. A system for providing audio or video data to a plurality of browser clients, comprising: a real-time video and audio server computer operative as a client computer as it receives and processes streaming video or audio data from at least one remote server; and a web server computer connected to said real-time video and audio server computer to receive processed streaming video or audio data from said real-time video and audio server computer and to route said processed streaming video or audio data, without a plug-in or a helper computer and to route said processed streaming video or audio data, without a plug-in or a helper application, to said plurality of browser clients, said web server routing said processed streaming video or audio data to individual browser clients of said plurality of browser clients until individual browser clients instruct said web server to stop.

2. The system of claim 1 wherein said real-time video and audio server includes: <u>a video proxy module; an audio proxy module</u>; and an HTTP link to said at least one remote server, said video proxy module and said audio proxy module processing streaming video or audio data from said at least one remote server.

3. The system of claim 2 wherein said real-time video and audio server further includes: <u>a video module for connection to a video card; and an audio module for connection to an audio card that receives input from a microphone and an audio line</u>.

4. The system of claim 1 wherein said web server routes said processed streaming video or audio data as a <u>Multipurpose Internet Mail Extension (MIME)</u> encoded data stream.

(**Application**) 21 (New). A system for providing audio or video data to a plurality of browser clients, comprising:

a real-time server for accessing streaming data; and a web server adapted to form individual connections with each of said plurality of browser clients and receive instructions from individual browser clients requesting streaming video or audio data, said web server requesting said real-time server to access said streaming video or audio data from at least one remote server on the behalf of said web server, said web server routing said streaming video or audio data <u>without a plug-in</u> or a helper application to each individual browser client that requests said streaming video or audio data.

24. The system of claim 21 wherein said real-time server includes <u>a video proxy; an audio proxy</u>; and an HTTP link to said at least one remote server, said video proxy and said audio proxy processing streaming video or audio data from said at least one remote server.

25.The system of claim 24 wherein said real-time server further includes <u>a video module for connection to a video card; and an audio module for connection to an audio card that receives input from a microphone and an audio line</u>.

26 The system of claim 21, wherein said web server routes said streaming video or audio data as <u>a Multipurpose Internet Mail Extension (MIME)</u> encoded data stream.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 21-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Burns et al [Burns 5,991,306] in view of Truong [6,151,609].

5.   As per claim 21, Burns discloses A system for providing audio or video data to a

plurality of browser clients, comprising:

a real-time server for accessing streaming data [Burns, ISP providing real-time

streaming data, col 2 lines 9-20; the content server 52 content the audio, video,

multimedia data, col 5 line 64-col 6 line 15, Fig 2]; and

a web server adapted to form individual connections with each of said plurality of

browser clients [Burns, Web server, col 11 line 41; Web browser, col 8 line 8] and

receive instructions from individual browser clients requesting streaming video (or

audio) data, said web server requesting said real-time server to access said streaming

video (or audio) data from at least one remote server on the behalf of said web server,

said web server routing said streaming video (or audio) data [Burns, the Service

Providers or LAN Web servers and continuous media server, Fig 2]

However Burns does not explicitly detail

web server routing said streaming video (or audio) data <u>without a plug-in or a</u>
<u>helper application to each individual browser client</u> that requests said streaming video or
audio data.

In the same endeavor, Truong discloses a web server communicates or routes a
file to the client without the use of a plug-in [Truong, col 18 lines 25-50]

Therefore it would have been obvious to an ordinary skill in the art at the time the
invention was made to incorporate the web server routing said streaming data without a
plug-in to client browser as taught by Truong into the Burns' apparatus in order to utilize
the Web server capabilities. Doing so would provide a quick and simple process to
retrieve the streaming video, audio data via Internet.

6.   As per claim 22, Burns-Truong disclose said real-time server accesses said
streaming video or audio data in response to a notification from said web server of at
least one request for said streaming video or audio data [Truong, alert, col 12 lines 1-
65].

7.   As per claim 23, Burns-Truong disclose a memory for storing said streaming
video or audio data, wherein said real-time server stores said streaming video or audio
data in said memory and said web-server receives said streaming video or audio data
from said memory [Burns, cache memory server, col 8 lines 23-40].

8.   As per claim 24 Burns-Truong disclose said real-time server includes a video

proxy; an audio proxy; and an HTTP link to said at least one remote server, said video

proxy and said audio proxy processing streaming video or audio data from said at least

one remote server [Burns, a proxy file, e.g. audio or video, col 9 lines 35-55].

9.   As per claim 25 Burns-Truong disclose said real-time server further includes a

video module for connection to a video card; and an audio module for connection to an

audio card that receives input from a microphone and an audio line as inherent features

of continuous media server.

10.   As per claim 26 Burns-Truong disclose said web server routes said streaming

video or audio data as a Multipurpose Internet Mail Extension (MIME) encoded data

stream as inherent feature of Web server.

11.   As per claim 27 Burns-Truong disclose A method of using a web server to

provide audio-visual data to a web browser clients, comprising:

receiving a request at said web server from at least one of said plurality of browser

clients for streaming video or audio data; said web server instructing a real-time server

to access said streaming video or audio data from a remote server on behalf of said

web-server [Burns, ISP providing real-time streaming data, col 2 lines 9-20; the content

server 52 content the audio, video, multimedia data, col 5 line 64-col 6 line 15, Fig 2];

and

said web server receiving processed streaming video or audio data accessed by said

real-time server and routing said processed streaming video or audio data to said at

least one of said plurality of clients without a plug-in or a helper application [Truong,

without the use of a plug-in, col 18 lines 25-50].

12.   As per claim 28, Burns-Truong disclose said web server receiving processed

streaming video or audio data comprises:

said real-time server storing processed streaming video or audio data in a memory; and

said web server accessing said memory to obtain said processed streaming video or

audio data [Burns, cache memory server, col 8 lines 23-40].

13.   As per claim 29, Burns-Truong disclose said real-time server stores compressed

streaming video or audio data in said memory.

14.   As per claim 30 Burns-Truong disclose said web server notifying said real-time

server of a request for streaming video or audio data [Truong, alert, col 12 lines 1-65].

15.   As per claim 31 Burns-Truong disclose A method of using a web server to

provide audio or video data to a plurality of browser clients, comprising:

        forming connections between a web server and each of a plurality of browser

clients; receiving requests at said web server for streaming video or audio data from

individual browser clients; said web server instructing a real-time server to access

streaming video or audio data from a real-time server on behalf of said web server

[Burns, ISP or Web server providing real-time streaming data, col 2 lines 9-20; the

content server 52 content the audio, video, multimedia data, col 5 line 64-col 6 line 15,

Fig 2];

said real-time server storing processed streaming video or audio data in a

memory; said web server receiving said processed streaming video or audio data from

said memory [Burns, cache memory server, col 8 lines 23-40]; and

said web server routing processed streaming video or audio data <u>without</u> a plug-

in or a helper application to each individual browser client requesting said streaming

audio or video data [Truong, without the use of a plug-in, col 18 lines 25-50].

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Thong Vu*, whose telephone number is (571)-272-3904. The examiner can normally be reached on Monday-Thursday from 6:00AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Andrew Caldwell*, can be reached at (571) 272-3868. The fax number for the organization where this application or proceeding is assigned is 571-273-8300

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval IPAIRI system. Status information for published applications may be obtained from either Private PMR or Public PMR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thong Vu
Primary Examiner
Art Unit 2142